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EMPLOYEES RETIREMENT SYSTEM OF TEXAS

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August 19, 1993

FILE # **RQ-00600-D**
21886-97

I.D.# **21886**

The Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711-2548

Opinion Committee

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RQ-600

Dear General Morales:

In the recent Session of the Texas Legislature, a number of bills passed affecting retirement of state employees and public school employees.

Two of those bills (S.B. 1181, Acts of the 73rd Texas Legislature, Regular Session, 1993, and H.B. 2711, Acts of the 73rd Texas Legislature, Regular Session, 1993) addressed the issue of transfer of service credit between the Employees Retirement System of Texas (ERS) and the Teacher Retirement System of Texas (TRS). In addition, S.B. 81, Acts of the 73rd Texas Legislature, Regular Session, 1993, provides a retirement incentive by increasing the multiplier from 2.00% to 2.25% per year of service credit for employees retiring under the ERS during the biennium beginning September 1, 1993.

It is this incentive factor that raises a question concerning the amount of money to be transferred from the TRS to the ERS when the person whose service is transferred elects to retire and receives the additional .25% per year of service credit. No such incentive is available to persons retiring under the TRS. A regular service retirement annuity, i.e., without the incentive, is calculated at 2% under the ERS. All service retirement annuities under the TRS are calculated at 2%.

As an example, a person who has 10 years of service credit in the TRS and attains 10 years of service credit in the ERS and is 60 years of age on September 30, 1993 (the earliest date for retirement with the incentive under the said S.B. 81) and transfers his TRS service credit to the ERS under S.B. 1181 (or has it transferred by law under H.B. 2711) may retire under the ERS with a total of 20 years of service credit with an annuity calculated at 2.25% of this average monthly compensation for his 36 highest months of compensation for each year of service credit.

The question is then raised as to which retirement system is responsible for paying for the incentive portion of the annuity. It is clear that, in our example, each system is responsible for one-half (1/2) of the regular annuity calculated at 2% per year.

Section 2 of S.B. 1181 adds Sections 805.007 and 805.008 to the Government Code which provide, in part, as follows:

Section 805.007 (b) - Service credit transferred under this chapter is considered as if it had been granted for service performed under the system to which it has been transferred and is used in satisfying minimum service requirements for retirement

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DAN MORALE

and in determining the amount of benefits that are based on the amount of a person's service credit.

Section 805.008 (a) - The system from which a person's service credit is transferred under this chapter shall transfer to the other system, at the time the annuity based on the service credit becomes payable, an amount equal to the portion of the actuarial value of the annuity that represents the percentage of the total amount of the person's service credited in both systems that was credited in the system from which the credit is being transferred.

Section 43 (e) of H.B. 2711 provides that:

At the time of the retirement or death of a person whose membership is transferred from the Teacher Retirement System of Texas to the Employees Retirement System of Texas pursuant to legislation enacted by the 73rd Legislature, Regular Session, 1993, the Teacher Retirement System of Texas shall transfer to the Employees Retirement System of Texas the person's service credit in the Teacher Retirement System and an amount of money equal to the portion of the actuarial value of any annuity that becomes payable under Chapter 814, Government Code, that represents the percentage of the total amount of the person's service credit in both systems that was credited in the Teacher Retirement System of Texas.

It is noted that S.B. 81 was signed by the Governor on April 22, 1993, well before the passage of H.B. 2711 and S.B. 1181. In addition Section 43 (e) was added to H.B. 2711 by the House-Senate Conferees on May 30, 1993.

It is the opinion of the ERS that the provisions of H.B. 2711 and S.B. 1181 cited above would require the TRS to transfer an amount of money to the ERS to fund the incentive portion of the annuity which is attributable to TRS service. The TRS has indicated their belief that they are responsible only for the portion of the annuity calculated at 2.00% and the ERS is responsible for funding all of the annuity increase resulting from the .25% incentive.

Your opinion is, therefore, requested in response to the following question:

If a person's TRS service credit is transferred to the ERS and he retires and receives the .25% per year incentive, must the TRS transfer to the ERS an amount equal to the part of the actuarial value of the incentive portion of the annuity that represents the percentage of the total amount of the person's service credit transferred from the TRS?

Sincerely,


CHARLES D. TRAVIS
Executive Director

CDT/KJ/sh

**** Bill History ****
8/25/93 - 08:49:40

Bill Number: TX73RSB 81 Author: 164 Barrientos
Sponsor: 72 Junell

By Barrientos. Relating to contributions to and benefits provided by certain statewide retirement systems.

| House | Description of Action | Committee | Date |
|--------|--|-----------|---------|
| SENATE | INTRODUCED AND REFERRED TO COMMITTEE ON | S-STATE | 2/17/93 |
| | COMMITTEE HEARING SET FOR | S-STATE | 3/ 1/93 |
| | REPORTED FROM COMMITTEE AS SUBSTITUTED | S-STATE | 3/ 1/93 |
| | PLACED ON THE SENATE INTENT CALENDAR FOR | | 3/ 3/93 |
| | PASSED | | 3/ 3/93 |
| | VOTE: Y: 31/N: 0 | | 3/ 3/93 |
| HOUSE | RECEIVED IN THE HOUSE - NOT REFERRED | | 3/ 3/93 |
| | REFERRED TO HOUSE COMMITTEE ON | APPRO | 3/ 4/93 |
| | COMMITTEE HEARING SET FOR | APPRO | 3/11/93 |
| | VOTED FAVORABLY FROM COMMITTEE AS SUBSTITUTE | APPRO | 3/11/93 |
| | REPORTED FROM COMMITTEE AS SUBSTITUTED | APPRO | 3/16/93 |
| | SET ON THE HOUSE CALENDAR | | 3/31/93 |
| | 1 FLOOR AMENDMENT(S) ADOPTED | | 3/31/93 |
| | PASSED TO THIRD READING | | 3/31/93 |
| | 1 FLOOR AMENDMENT(S) ADOPTED | | 4/ 1/93 |
| | PASSED | | 4/ 1/93 |
| | VOTE: Y:129/N: 0 | | 4/ 1/93 |
| FINAL | SENATE CONCURRED IN HOUSE AMENDMENTS | | 4/ 6/93 |
| | SIGNED BY THE GOVERNOR | | 4/22/93 |
| | EARLIEST EFFECTIVE DATE | | 4/22/93 |

** General Notes **

3/3/93 - Senate - Committee substitute adopted
3/31/93 - House - Committee substitute and one floor amendment adopted
4/1/93 - House - One floor amendment adopted

** EFFECTIVE - APRIL 22, 1993.

** End of Listing **